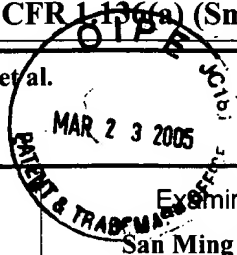


87W 1647

**COMBINED AMENDMENT & PETITION FOR EXTENSION OF  
TIME UNDER 37 CFR 1.136(a) (Small Entity)**

Docket No.  
**H&U104**

In Re Application Of: **Nevermann et al.**



|                                      |                                      |                                 |                                  |                               |                                 |
|--------------------------------------|--------------------------------------|---------------------------------|----------------------------------|-------------------------------|---------------------------------|
| Application No.<br><b>09/831,216</b> | Filing Date<br><b>April 27, 2001</b> | Examiner<br><b>San Ming Hui</b> | Customer No.<br><b>000041022</b> | Group Art Unit<br><b>1617</b> | Confirmation No.<br><b>1455</b> |
|--------------------------------------|--------------------------------------|---------------------------------|----------------------------------|-------------------------------|---------------------------------|

Invention: **Agent for Repelling and Inactivating Pathogenic Organisms of Plants**

**COMMISSIONER FOR PATENTS:**

This is a combined amendment and petition under the provisions of 37 CFR 1.136(a) to extend the period for filing a response to the Office Action of **Sept. 22, 2004** in the above-identified application.  
*Date*

The requested extension is as follows (check time period desired):

☐ One month    ☐ Two months    ☒ Three months    ☐ Four months    ☐ Five months

from: **December 22, 2004**    until: **March 22, 2005**  
*Date*    *Date*

Applicant claims small entity status. See 37 CFR 1.27.

The fee for the amendment and extension of time has been calculated as shown below:

**CLAIMS AS AMENDED**

|  | CLAIMS REMAINING<br>AFTER AMENDMENT | HIGHEST #<br>PREV. PAID FOR | NUMBER EXTRA<br>CLAIMS PRESENT | RATE       | ADDITIONAL<br>FEE |
|--|-------------------------------------|-----------------------------|--------------------------------|------------|-------------------|
| TOTAL CLAIMS   | 7 -                                 | 20 =                        | 0                              | x \$25.00  | \$0.00            |
| INDEP. CLAIMS  | 2 -                                 | 3 =                         | 0                              | x \$100.00 | \$0.00            |
| FEE FOR AMENDMENT                                    |                                     |                             |                                |            | \$0.00            |
| FEE FOR EXTENSION OF TIME                            |                                     |                             |                                |            | \$510.00          |
| <b>TOTAL FEE FOR AMENDMENT AND EXTENSION OF TIME</b> |                                     |                             |                                |            | <b>\$510.00</b>   |

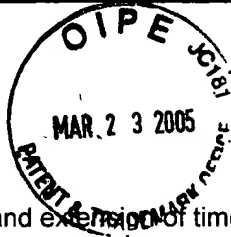
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**COMBINED AMENDMENT & PETITION FOR EXTENSION OF  
TIME UNDER 37 CFR 1.136(a) (Small Entity)**

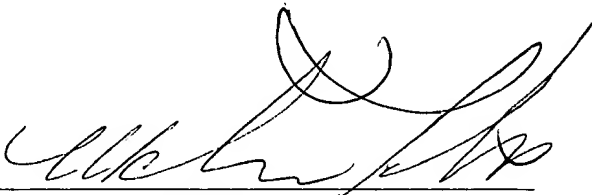
Docket No.  
**H&U104**



The fee for the amendment and extension of time is to be paid as follows:

- ☒ A check in the amount of **\$510.00** for the amendment and extension of time is enclosed.
- ☐ Please charge Deposit Account No. \_\_\_\_\_ in the amount of \_\_\_\_\_
- ☒ The Director is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. **500867**
- ☒ Any additional filing fees required under 37 C.F.R. 1.16.
- ☒ Any patent application processing fees under 37 CFR 1.17.
- ☒ If an additional extension of time is required, please consider this a petition therefor and charge any additional fees which may be required to Deposit Account No. **500867**
- ☐ Payment by credit card. Form PTO-2038 is attached.

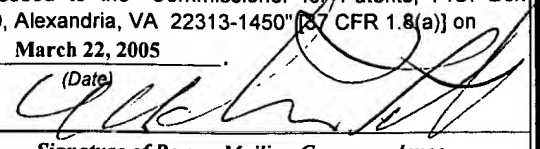
**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**



*Signature*

Dated: March 22, 2005

**Marlana Titus, Reg. No. 35,843**  
**Nash & Titus, LLC**  
**6005 Riggs Road**  
**Laytonsville, MD 20882**  
**(301) 977-7227**

|   |
|---|
| I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to the "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on<br><u>March 22, 2005</u><br>(Date)<br><br><i>Signature of Person Mailing Correspondence</i><br><b>Marlana Titus</b><br><i>Typed or Printed Name of Person Mailing Correspondence</i> |
|---|

CC:

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of

NEVERMANN, et al.

Application No. 09/831,216  
US national app. of PCT/EP99/07151

Filed: April 27, 2001

For: AGENT FOR REPELLING AND INACTIVATING PATHOGENIC  
ORGANISMS OF PLANTS

Group Art Unit: 1617

Examiner: San Ming R. Hui

March 22, 2005

INTERVIEW SUMMARY FOR  
TELEPHONE INTERVIEW WITH EXAMINER ON DECEMBER 7, 2004

Hon. Commissioner of Patents  
and Trademarks  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicants summarize here the telephone interview conducted with Examiner Hui  
on December 7, 2004.

1. Claims discussed: All pending (Claims 11 and 17-22)
2. Prior art discussed: All cited art (Moberg, Goffinet and Merck Index 11<sup>th</sup> edition)
3. Exhibits shown/demonstrations: none
4. Principal proposed amendments discussed: The Examiner reiterated that his primary objection of independent composition claim 11 was on the grounds that the cited prior art generally teaches germicidal and antifungal compositions that are useful to combat phytopathogenic microorganisms on hard surfaces, and the weight ratios for the various components are overlapping the weight ratios in the art or are obvious optimizations. The Examiner agreed that none of the art teach the particular claimed combination of ingredients, nor does the art even suggest the problem dealt with by the invention (e.g., combating and inactivating phytopathogenic organisms that are present both on plants

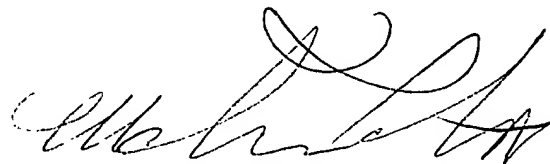
and hard surfaces without damaging the plants and without leaving phytotoxic residues on the hard surfaces). However, because claim 11 is a composition claim the Examiner is giving little weight to the affirmative recitation of these properties. The Examiner reiterated that the various components are, in his opinion, well known to generally combat microorganisms.

The Rule 132 Declaration previously submitted was reviewed, as evidence that disinfectants like those of the prior art are destructive to plants even if useful to treat surrounding hard surfaces. The Examiner suggested that additional evidence be submitted showing criticality of the claimed combination of ingredients and/or weight ratios—such as, for instance, data showing that compositions containing the active ingredients of the prior art fail to exhibit the properties of the composition of the claims, or that compositions containing ingredients outside the claimed weight ratios of monovalent alcohols, glycols or hydrotropic agents fail to exhibit the properties.

NOTE: Subsequent to this interview, on January 25, 2005, applicant's representative faxed to the Examiner pages from the relevant prior art—specifically, examples 5(d), 8 and 10(b) of Moberg WO 96/11572, and example 6 of Goffinet USP 4,414,128—to seek the Examiner's guidance whether these exemplary prior art formulations would be adequate for comparative testing against the claimed invention for purposes of evidence in a Rule 132 Declaration. The Examiner subsequently left a voicemail for applicant's representative that these exemplary formulations would be adequate.

If the Examiner has any questions about this interview summary or would like to discuss any of these matters further, he is encouraged to contact Marlana K. Titus at (301) 977-7227.

By:



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